

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RONALD DAIN HARRIS,

Defendant.

2:09-cr-00223-RCJ-LRL

ORDER

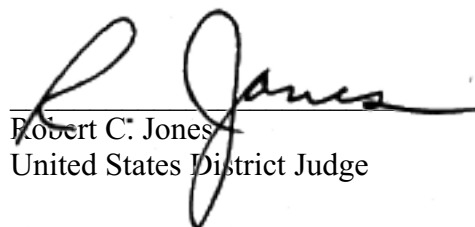
Defendant objects to the Magistrate Judge's Report & Recommendation (#37) recommending denial of his Motion to Suppress Statements for Fifth Amendment Violation (#24). In his Objection (#41), Defendant focuses on the fact that the investigating officers had knowledge of his intoxication when he waived his *Miranda* rights. But the relevant question is whether a defendant's intoxication is so extreme that his freewill is overborne. *See United States v. George*, 987 F.2d 1428, 1430–31 (9th Cir. 1993). An officer's knowledge of a defendant's reduced capacity cannot in and of itself contribute to the overbearing of a defendant's will for the simple reason that an officer's own knowledge is not directly perceivable by a defendant. Only an officer's words or actions (of whatever motivation) are perceivable by a defendant and can "coerce" him, not the officer's own perceptions. An officer's knowledge may rightfully make a court more inquisitive, but standing alone, his perceptions are not evidence of coercion. In the present case, the Magistrate Judge correctly concluded that under the totality of the circumstances, particularly in light of Defendant's appropriate responses to questions and commands, his intoxication was not so extreme so as to overbear his freewill.

CONCLUSION

IT IS HEREBY ORDERED that the Magistrate Judge's Report and Recommendation (#37) is ADOPTED.

IT IS FURTHER ORDERED that the hearing, currently scheduled for Monday, April 26, 2010 at 3:15 p.m. shall be VACATED.

DATED: April 1, 2010


Robert C. Jones
United States District Judge